

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

JOSE RAFAEL NUNEZ,)	
)	
Plaintiff,)	
)	
v.)	1:09CV650
)	
THE UNITED STATES OF)	
AMERICA,)	
)	
Defendant(s).)	

ORDER AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Plaintiff, a federal prisoner, has submitted a motion for return of property pursuant to Fed. R. Crim. P. 41(g). Such a motion filed after the completion of criminal proceedings is a civil action subject to the fee provisions of 28 U.S.C. § 1915. *See United States v. Jones*, 215 F.3d 467 (4th Cir. 2000). Venue for such a motion is proper in the district where the seizure occurred. *See United States v. Garcia*, 65 F.3d 17 (4th Cir. 1995). Plaintiff has failed to submit either the \$350.00 filing fee or an application to proceed *in forma pauperis*. In addition, Plaintiff's motion is not on the required form for this Court. This motion should, therefore, be dismissed without prejudice to Plaintiff submitting his action on the proper forms along with either the \$350.00 filing fee or a completed application to proceed *in forma pauperis*. To assist Plaintiff, the Clerk will send Plaintiff the Motion for Return of Property forms, instructions and an application to proceed *in forma pauperis*.

In forma pauperis status is granted for the sole purpose of entering this Order and Recommendation.

IT IS THEREFORE ORDERED that *in forma pauperis* status is granted for the sole purpose of entering this Order. The Clerk is instructed to send Plaintiff Motion for Return of Property forms, instructions, an application to proceed *in forma pauperis*, and a copy of pertinent parts of Fed. R. Civ. P. 8 (*i.e.* Sections (a) & (e)).

IT IS RECOMMENDED that this action be filed and dismissed *sua sponte* without prejudice to Plaintiff filing a civil complaint, on the proper Motion for Return of Property forms, which corrects the defects cited above.

A handwritten signature in black ink, appearing to read 'Wallace W. Dixon', written over a horizontal line.

Wallace W. Dixon, U. S. Magistrate Judge

August 31, 2009